MALAYSIAN REPORTS

WONG KUM KEONG v. YEAP CHOOI

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah S.C. JJ.) February 6, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 90 of 1985]

Tort – Negligence – Fatal accident claim – Amnesia – Police sketch plan – Dependency claim – Loss of expectation of life.

Damages – Fatal accident – Quantum – Dependency claim – Loss of expectation of life.

In this case the respondent brought a fatal accident claim arising from the death of the deceased in a road accident. The learned trial judge found the appellant solely to blame for the accident. He allowed 34 years purchase and assessed the deceased's income at $350.00 per month.

Held: (1) the ground relating to liability was without merit and the learned judge was perfectly justified to hold the appellant solely to blame based on the police sketch plan;

(2) the learned judge in allowing 34 years purchase was manifestly excessive and had not considered the vicissitude of life and the payment of a lump sum. On the facts and circumstances of the case, 15 years' purchase would be a reasonable multiplier to adopt;

(3) although the learned trial judge was justified in finding that the deceased was earning $350 per month in his assessment of the damages he had not deducted a sum which the deceased would have expended on himself. A deduction of $90 per month would be a fair figure and this would leave a sum of $260 per month as multiplier. Based on the annuity table, the amount to be awarded would be $32,384.52, rounded to $32,500;

(4) a sum of $4,000 for loss of expectation of life is fair and reasonable but as this is a fatal accident claim by the dependants of the deceased, this sum would be treated as having been merged in the amount awarded under the fatal accident claim.

HIGH COURT.

Gurdip Singh for the plaintiff.
Ngan Siong Hing for the defendant.

Anuar J. : The plaintiff is the administrator of the estate of Yeap Kian Sin and claims against the defendant for damages for the benefit of dependants of the deceased who died as a result of a motor-accident on July 8, 1978 in which the motor-cycle No. AX 5207 ridden by the deceased was involved in a collision with a motor-car No. AAB 5757 driven by the defendant.

On July 8, 1978 at about 12.30 a.m. the deceased, Yeap Kian Sin, was riding his motor-cycle No. AX 5207 along Tambun Road, Ipoh from the direction of Ipoh town towards Tambun. He was on his way home in Ipoh Garden.

There is no eye-witness to the accident except the defendant. The defendant however was not able to give a clear picture of how the accident happened. He cannot remember how the accident happened. The Court therefore has to rely very much on the sketch plan.

From the sketch plan, it is clear to me that the motor-car was travelling at a great speed. The brake marks are 58' 2" and 96' 7" made by the left and right tyres respectively of the car AAB 5757. The position of the brake marks shows that the car had travelled diagonally across the road from right to left as one faces Ipoh from the direction of Tambun. In other words, the car came from the wrong side of the road if it was travelling from the direction of Tambun towards Ipoh. It means that the car must have gone on to the wrong side of the road. The probable conclusion is that the collision must have occurred when the car was on its wrong side of the road, when it encroached into the path of the deceased's motor-cycle. The conclusion is supported by the presence of broken pieces of glass "H1" and the wiper of the car AAB 5757 "H" on the right-hand side of the road as one faces Ipoh as shown in the sketch plan. The impact of the collision must have been great as to cause the deceased's body "J" to be thrown to the opposite side of the road. The motor-cycle "P" must also have been thrown to its opposite side of the road by the force of the collision.

In my judgment the collision occurred on the right-hand side of the road as one faces Ipoh from the direction of Tambun. That is to say it occurred on the defendant's wrong side of the road. The defendant must have gone on the wrong side of the road and encroached into the deceased's path and collided into the deceased's motor-cycle. I am also of the view that the defendant was travelling at a very great speed. I found therefore the defendant negligent and solely to blame.

In passing I would also refer to the physical condition of the defendant driving the car. There is evidence that at the time when collision took place the defendant was driving under the influence of drink. His blood specimen was taken and sent to the chemist for analysis who found that the alcohol content found in the blood was very high. The defendant was under the influence of alcohol

and was not in a safe condition to drive the motor-car.

Now with regard to the damages I found as a fact that the deceased was working as a clerk and during his free time and weekends he gave tuition to students. On the average I would say he earned about $350 p.m. At the time of his death he was 21 years old. If he works until the age of 55 he would have 34 years of working life. The loss of earning therefore at $350 p.m. with a 34 years purchase would be $66,055 on the annuity figure. I would round them up to $66,000.

For special damages, I would give $2,000 for the expenses for funeral, $400 for obtaining the Letters of Administration and $45 for obtaining other documents making a total of $2,445.

For the above reasons I would give judgment for the plaintiff accordingly with costs.

The defendant appealed from the above decision to the Supreme Court.

SUPREME COURT'

Ngan Siong Hing for the appellant.

David Tay for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court) : This appeal concerns a fatal accident claim by the dependants, that is, the parents of the deceased. At the death of the deceased, the father was about 58 years and the mother about 44 years of age.

The main issue before us is the question of quantum. In fact, most of the court's time was taken up by it. The learned Judge, in allowing 34 years' purchase, is, in our opinion, manifestly excessive. Also, he had not considered the vicissitude of life and the payment of a lump sum. On the facts and circumstances of this case we are of the view that 15 years' purchase would be a reasonable multiplier to adopt.

The ground relating to liability was entirely devoid of merits. The appellant did not produce any medical report to show that he was suffering from amnesia soon after the motor accident and he would be the most logical person to describe how it occurred. As the appellant failed to do so the learned Judge was perfectly justified to hold him solely to blame based on the police sketch plan.

We are prepared to accept the finding of the learned Judge that deceased was earning $350 per month. We noted that the learned Judge had not deducted a sum which deceased would have expended on himself. We consider a deduction of $90 per month a fair figure. That would leave a sum of $260 per month as multiplicant. Based on the annuity table, which, in practice, has been used by the courts in Malaysia, the amount to be awarded is $32,384.52. We would round this off to $32,500.

As regards the cross-appeal, we consider a sum of $4,000 for loss of expectation of life to be fair and reasonable. But, as this is a fatal accident claim by the dependants of the deceased this sum should be treated as having been merged in the amount awarded under the fatal accident claim.

For reasons given, we would allow the appeal with costs here only. We would also allow the cross-appeal with costs. Deposit to be refunded to the appellant.

Order accordingly.

Solicitors: *Abbas & Ngan; Gurdip & Co.*

KARPAL SINGH v. ATIP BIN ALI

[S.C. (Seah, Hashim Yeop A. Sani & Wan Hamzah S.C. JJ.) September 25, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 69 of 1986]

Practice and Procedure – Costs – Costs against advocate and solicitor personally – R.H.C. 1980, O.59 r.8.

Legal Profession – Advocate and solicitor – Professional conduct – Dereliction of duty – Personal liability to costs.

In this case the learned judge had struck out a civil suit against the appellant and another ([1987] 1 M.L.J. 82). The appellant applied for costs to be borne personally by counsel for the plaintiff. The learned judge declined to make the order. The appellant appealed.

Held: (1) an advocate and solicitor is an officer of the court and his professional conduct is always under the supervision and scrutiny of the court. It follows that when there is dereliction of duty on the part of an advocate and